

INDONESIAN LABOUR LAW DEVELOPMENT AND REFORM: THE YEARS OF RATIFYING FUNDAMENTAL HUMAN RIGHTS AS DEFINED WITHIN THE ILO CORE CONVENTIONS¹

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In many Asian developing countries, including Indonesia, labour law enacted by the Government that are restrictive in nature and sometimes even repressive against free exercise of trade union rights, and the existence of labour law obviously repressive one. In other words, the State law tends to served to control the performance of trade unions, as well as to be used to managed conflicts between employer and workers. It is, therefore, labour law had a rather strong policy-oriented structure.³

The law tends to be employed as a machinery to achieve their imminent policy that is economic growth and political stability, rather than to reach social justice of the workers. It is the so called *the Corporatist Model* or *Regulatory Model* in industrial relations in which the role of the Government is very dominant in labor-management relationships. In this sense, all employment terms and working conditions are defined and regulated by the Government within labour policy and legislations. Hence, the labor law of a country will be a legal compulsory and becomes part of the public law.⁴

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³ Shin-Ichi-Ago, "Labour Law in Asia: International Labour Standards in Economic Development", In Naoyuki Sakumoto, Masayuki Kobayashi, and Shinya Imaizumi (Eds), *Law, Development and Socio-Economic Changes in Asia*, IDE Development Perspective Series No. 3, Institute of Developing Economies and Japan External Trade Organization (JETRO), 2003, p. 28.

⁴ It is in contrary with the so called *the Contractual Model* in industrial relations where the role of Government is limited particularly in the enactment of employment terms and working conditions within the labor policy and legislations. Those employment terms and conditions of working should be freely negotiated by the employer and the employees or their labor union representatives. It means that in *the contractual model*, the majority of labour law principles based on contract in which the parties have freedom to define and regulate employment terms and conditions based on their respective interest and need. Hence, the above mentioned model in the labour law point of view is voluntary and becomes part of private law. See Aloysius Uwiyono, "Indonesian Labor Law Reform Since 1998", In Naoyuki Sakumoto and Hikmahanto Juwana (Eds), *Reforming Laws and Institutions in Indonesia: An Assessment*, IDE-JETRO, Faculty of Law University of Indonesia Press, Jakarta, 2007, p. 187.

In the case of Indonesia, the development and reform of labour law can be observed into two period of time namely prior the reformation era of 1998 and posterior 1998. In the period of before 1998⁵ the industrial relationships that established by the Government was *the corporatist model* or *regulatory model*. It meant that intervention of the Government in labor relations and its regulations was very dominant, and that was why the development of Indonesian labor legislations in this era defined as part of public law.

Legal reform in Indonesia followed the fall of the some 32 years dictatorial rule of the former President Soeharto. It was started under the former President Habibie who succeeded Soeharto when the latter resigned from presidential office in May 1998. The reforms found their fundamental legal basis within the Broad National Policy Guidelines (GBHN 1999 – 2004), the National Five Year Development Plan (REPELITA), and the Act No. 25 of 2000 concerning National Development Program (PROPENAS 2000 – 2004). In this sense, one of the basic program defined within the said PROPENAS was to develop legislations that focused to ratify international conventions including those related to human rights. In relation to the establishment of labour law, the program mainly relates to the ILO Core Conventions

Legal reform, which is called *reformasi hukum* in Indonesia language, in the posterior 1998 can be characterized as the largest reform. One of the fundamental legal reform was the series of four amendments to the 1945 Constitution between 1999 to 2002 in which the amendment has brought about dynamic changes and reforms to the core of the Indonesian legal system included in the field of the labour law system.

In the period of time between 1994 to 1997, Indonesia was under the increasing level of domestic and internationally pressure from International Labor Organizations (ILO) to recognize and enforce the application of the 8 ILO Core Convention regarding the Fundamental Rights of the Workers, what was considered to be a fundamental industrial labor and human rights, and the right to freedom of trade unions and associations in particular. The said labor movements had considerable success in socializing the right of workers to take part a trade union as well as the right to bargain collectively for better employment terms and working conditions in industrial relations. Consequently, the

⁵ The time before 1998 is in particular to mention after Indonesia proclaimed its independence on August 17th,1945.

domestic and international pressure should naturally be able to ensure the movement model in industrial relations from *corporatist model* or *regulatory model* into *the contractual model*.

In the period after 1998 under the increasingly pressure of international labour movements, Indonesia had finally ratified some 5 of the ILO Core Conventions. Those were as follows: (1) Convention No. 87 on Freedom of Association and Protection of the Rights to Organize (ratified in Presidential Decree No. 83 of 1998); (2) Convention No. 105 concerning the Abolition of Forced Labor (ratified in the Act No. 19 of 1999); (3) Convention No. 138 regarding Minimum Age for Admission to employment (ratified in the Act No. 29 of 1999); (4) Convention No. 111 on the Discrimination in Respect of Employment and Occupation (ratified in the Act No. 21 of 1999); and (5) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Forms of Child Labor (ratified in the Act No. 1 of 2000).

It should be noted that long time prior 1998 Indonesia had actually ratified three of ILO Core Conventions namely (1) Convention No. 29 on Forced or Compulsory Labor (ratified firstly within the Act No. 261 of 1933); (2) Convention No. 89 regarding the Application of the Principles of the Right to Organize and to Bargain Collectively (ratified in the Act No. 18 of 1956); and (3) Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified in the Act No. 80 of 1957). That was why then Indonesia could fairly be mentioned as the first country in Asian region which was completely ratified all 8 of the ILO Core Conventions.

In accordance to the reformation era, in the year of 2000 the ratification of ILO Core Convention No. 87 followed by the promulgation of Act No. 21 of 2000 concerning Trade Unions which defined that every worker possesses a right to freely form and become member of trade union. In this sense, registration of a new established trade union was remain an official requirement to the Department of Labor Affairs. Implication of the enactment of the said provision was that a Company may has a multitude of trade unions operating concurrently within its work place. If compare with the prior of 2000 there was no single trade union could be legally established except for SPSI (All Indonesian Labor Union) or the former one namely FBSI (All Indonesian Labor Federation) that all under the sponsorship and strictly control of the Government. It means that under the Act No. 21 of 2000 Indonesia on Trade Unions, Indonesia started to implement the multi trade unions system instead of the single trade unions system in industrial relationships.

Following the above Act of 2000, in the year of 2003 the Government enacted a new labour law namely the Act No. 13 of 2003 regarding Labor. The recent law provides controversial for a number terms and conditions contained therein due to the Act tended to be pro-employer's business interests then to protect needs of the employees in industrial relations, and the law seemed to be used as a means the only for consolidating profits and improving margins of the employers⁶.

In addition, the enactment of the Act No. 13 of 2003 was followed by the promulgation of the Act No. 2 of 2004 concerning Industrial Relations Dispute Settlement. The latter Act defined a significant reformation in term of dispute settlement framework and mechanism in industrial relations. Another new labor law that enacted by the Government in the posterior time of reformation era was the Act No. 39 of 2004 regarding Migrant Workers Protection. It could be observed that in terms of substances reflected in most articles within the mentioned Act were honestly derived from the provisions that contained in the Ministerial Decree No. 104A of 2002 on Migrant Worker Protection. Hence, it is fair to say that articles of the Act of 2004 were mostly legal restatements of the said Ministerial Decree of 2002 which defined principles that migrant workers remained subject to law, and therefore their rights need to be protected in relation to the working conditions and terms of employment.

What can be concluded from the above outline and description is that the Indonesian labor law development and reform is fairly intended to accommodate the international conventions and the ILO Core Conventions in particular by conducting ratification of the conventions. This brings a consequence of changing paradigm in industrial relations in the

⁶ Those were primarily reflected in the employment terms and working conditions such like: (1) legalizing *out-sourcing system* that could bring an negative effect of reducing job security for the official workers; (2) legalizing *specified time of working contract* which could be enforced to a temporary or non-permanent work contracts for the workers; (3) legalizing *the restriction of the right to strike* to a particular types of labor disputes; (4) legalizing *the right of employers to terminate their workers* who became a convicted person due to a criminal case without the need to await a binding penal decision made by Judge in criminal justice process; and (5) legalizing *inconsistence and legal uncertainty* in a number of articles defined in the Act of 2003 due to explicitly adopted and repeated employment terms and working conditions that have previously been regulated in a number of legislations. See in detail in Aloysius Uwiyono, "Indonesian Labor Law Reform Since 1998", In Naoyuki Sakumoto and Hikmahanto Juwana (Eds), *Reforming Laws and Institutions in Indonesia: An Assessment*, IDE-JETRO, Faculty of Law University of Indonesia Press, 2007, pp. 196 - 198.

country that is to implement *the contractual model* instead of *the corporatist model* or *regulatory model*, as well as the use of *multi-union system* instead of a *single union system* in term of labor institution and worker association. Those particularly based on the legally basis of ILO Convention No. 87 and No. 98 related to the Law No. 21 of 2000 regarding Trade Unions.

Ironically, the new Act No. 13 of 2003 concerning Labor that established in the time of reformation era reflected a set back regulations due to the reasons that most of articles contained therein adopted from the old legislations enforced prior to 1998 meaning that intervention of the Government in determining employment terms and working conditions remains a dominant factor. Consequently, legal position of the Trade Unions disregarded and found ignorance especially in the process of collective bargaining within industrial relations. It could considerably be understood in the eyes of the Government the existence and orientation of the Trade Unions mostly political in nature than economical purposes for the substantial improvement of labor's prosperity.

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